WATER RIGHTS

ARE APPURTENANT TO THE LAND

The historical water rights of Hispanic and non-Hispanic farmers in Southern New Mexico are not being recognized by the State Engineer's Office , as the Native American and Northern New Mexico Acequias:

a. Historical territorial Rights are not acknowledged (pre -1912).
b. Historical land and personal property rights guaranteed by the Treaty of Guadalupe Hidalgo are not being acknowledged (1848).
c. Historical acequias in Southern New Mexico - Dona Ana County – 1842 La Acequia Madre (Dona Ana Lateral): acequias -- a ditch, channel or canal , through which water is diverted from its natural course conducted for use in irrigation or other purposes governed by specific statutes or case law.
d. Rio Grande Compact (1939)

1. Water right characteristics that relate to location:
   a. Point of diversion- Leasburg Dam
   b. Place of use-land/farms in the Mesilla Valley
   c. Basin of origin—Mesilla aquifer/basin
   d. Water rights used for irrigation are appurtenant to the land in which water is applied. Appurtenant rights are conveyed with the land if they are not reserved in the deed.

2. Water rights used for irrigation is not adequately protected or legislated:
   a. Agricultural water rights are not protected from residential, commercial or industrial development.
   b. Water legislation is [redacted] development biased: developers for the most part DO NOT bring water rights to a proposed development.
   c. Developers have legislative authority to sink wells into the aquifer when municipal water is un available, thereby increasing the depletion of the aquifer (ground water) and decreasing the use of irrigable water (agriculture/farming)

3. The priority date of water rights (surface or ground water)
   a. Pre – 1907 surface water rights predate the State Engineer jurisdiction
   b. Pre—1956 ground water rights predate the State Engineer jurisdiction
   c. Declaration of the basin by the State Engineer (1980)

Acequia—a canal which water diverted from its natural course is conducted for use in irrigation.

Irrigate – to irrigate land by means of using channels.

Appurtenant – water rights applied for irrigation belong to the land unless restricted.

Water Law Related ARTICLES

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Summary of Key Terms Relevant to New Mexico Water Law - AUGUST 1998

acequia - A ditch, channel, or canal, through which water, diverted from its natural course is conducted for use in irrigation or other purposes. Acequias are governed by specific statutes and case law. An acequia is an historic form of cooperative water use.

acre foot - The amount of water which will cover one acre of land to a depth of one foot. One acre foot of water equals 325,850 gallons. Water rights are usually quantified in acre feet.

appurtenant - Water rights used for irrigation are appurtenant to land in which water is applied. Appurtenant water rights are conveyed with the land if they are not reserved in the deed.

beneficial use - Beneficial use is "the basis, the measure, and the limit of the right to the use of water." Domestic, stock watering, agricultural, industrial, and municipal uses are examples of beneficial use. No one is entitled to receive water for a use not recognized as beneficial. No matter what date of priority of appropriation, no one is entitled to receive more water than is necessary for actual use; maximum utilization is a fundamental requisite of beneficial use.

forfeiture - A person entitled to the beneficial use of water may forfeit the water right if it is not used for four consecutive years for the purpose for which it was appropriated or adjudicated. The four-year period does not apply if the reason for nonuse was beyond the control of the owner.

perfected water right - To perfect a water right, a person must obtain a permit to appropriate, a license to drill, must put water to beneficial use, and must receive a certification of inspection of completion of works.

prior appropriation - Water law in most arid western states is based on the law of prior appropriation. This means that the water is public and is available for appropriation based on priority dates provided the water is put to beneficial use. Under prior appropriation, a person with an earlier priority date has a right to take the full amount of water before those with later priority dates can take theirs.

public waters - Natural waters flowing in streams and water courses in New Mexico and underground waters are public waters, subject to appropriation and adjudication.

State Engineer - A professional engineer appointed by the Governor and confirmed by the Senate, the State Engineer has general supervision of waters of the state and of the measurement, appropriation, distribution, and other duties related to water rights.

Water Code of 1907 - In New Mexico, the Water Code of 1907 established that the right to the use of water, both as to volume and use, would be regulated by the state. Pre-1907 water rights are those that predate the water code and may be used without application to the State Engineer.

water ownership - All water within the state, whether above or beneath the surface of the ground, belongs to the state, which authorizes its use; there is no ownership in the corpus of the water, but the use may be acquired. The basis of such usufructuary right is beneficial use.

water right - Water rights are separate and distinct real property rights that can be bought or sold. They can stay with or be severed from the land and transferred to other uses. Water rights are usually bought and sold in terms of acre feet per year.

basin - The State Engineer has jurisdiction, that is requires a permit and license to appropriate water in "declared" basins. A basin is declared if the State Engineer can reasonably ascertain its boundaries. The State Engineer has regional offices, and basins are divided up among the regional offices. Most of New Mexico's water is contained in declared basins.

These definitions, provided by Marilyn C. O'Leary and Jeffrey Albright of the Eastham Johnson Monnheimer & Jontz law firm, is intended to update and inform the reader. Its contents are not to be considered legal advice or opinion.

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This article concludes the overview of the key points presented at the **Sixth Annual Water Law Conference** recently held in Santa Fe. Here we address the comments of *V. Phillip Soice*, President of Southwest Water Consultants, Inc., Santa Fe. He presented an historical overview of water rights prices along the Rio Grande and throughout New Mexico.

Pricing Water Rights Along the Rio Grande - NOVEMBER 1998

There are eight factors that affect the price of water rights. Of these the most determinate are location (the single most important criteria), supply and demand conditions that exist in a particular area, and change in the purpose of use.

Mr. Soice emphasized that water supplies in the basins analyzed have for the most part been fully appropriated by irrigated agriculture since the early 1900s. The demand for reliable sources of water for municipal and industrial uses has steadily increased and competes with the agricultural uses. For example, the Santa Fe population has increased from 33,400 in 1960 to about 59,800 in 1994. This population growth and the resultant water use has taxed the finite water supply causing the price of water to increase.

There are water right characteristics that relate to location and impact price: (1) point of diversion, (2) place of use, and (3) basin of origin. Water rights are generally transferable to different points of diversion and places of use so long as the points and places are located within the water rights basin of origin. Transferring a water right from one basin to another is generally not permitted.

Regarding the change in the purpose of water use, they have traditionally transferred from agricultural irrigation to commercial and industrial uses. Irrigated agricultural can afford to pay only several hundred dollars per acre foot, while municipalities and industry can afford to pay several thousand dollars per acre foot. Therefore, the projected use by an intended buyer will have a significant impact on the price.

Other criteria considered but which had lesser impact were quantity of sale, water quality, type of water (surface or ground water), and priority date of the water right. Surprisingly, pre-1907 surface water rights and pre-1956 ground water rights, which predate the State Engineer jurisdiction, had little impact on the price of water.

The relative abundance of available water and water rights in the Rio Grande has kept prices relatively low for those areas, while limited water availability on tributaries coupled with heavy demand has driven prices high.